STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

Stakeholder Hearings on Energy Facility Permitting and Changes to the Siting Process	)	Docket No. 99-SIT-6
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DISSENTING OPINION OF COMMISSIONER MICHAL C. MOORE
TO THE
REPORT ON IMPROVEMENTS TO THE ENERGY COMMISSION'S ENERGY FACILITY SITING PROCESS

March 15, 2000, Business Meeting
Agenda Item #21

COMMENTS ON THE PROPOSED REPORT

I offer below my comments on the Siting Committee's proposed revisions to the siting process, compiled in response to SB 110. My comments, however, are not limited solely to the SB 110 process. I have availed myself of this opportunity to revisit the issue in the context of a rapidly changing and evolving energy market in light of the deregulation activities that have taken place to date.

The need to make changes to the siting process is not new. Over the years, we have seen many changes to the siting process in response to other changes in context. For example, we saw the practical elimination of the Notice of Intent process when exemptions for Qualifying Facilities were enacted. Similarly, prior to SB 110, we saw the practical elimination of the Integrated Assessment of Need. Now the "need test" is formally a relic of the past. (Parenthetically, "need" is driving our siting process decisions now more than ever.)

Through all of this, however, we must not forget that the Commission's mission has not changed. We are still fundamentally charged with simultaneously processing developer requests for certification of new generation facilities, in a timely manner, while protecting the overall public interest. The public interest as I see it, spans the range from environmental protection to ensuring adequate and reliable supplies of energy over the long term.

In general, the proposed report "fine tunes" the existing Energy Facility Siting Process, but does not offer substantive solutions to many of the issues identified during the Siting Committee's Stakeholder Hearing process or in the previous memos I have forwarded on to each of you. For instance, the stakeholder process conducted by the Energy Commission's Energy Facilities Siting Committee resulted in the identification of many problems and inefficiencies and a wide-range of possible solutions, many of them innovative, but this has not been translated into a comprehensive revision to the system we employ. The report by staff asserts that the public generally supports the Certified Regulatory Process (see pg. 32). This is patently false. We have ample public testimony in opposition to this viewpoint, and recent criticism from the legislature and outside parties that backs this up. However, if you sit on a siting case, you know it to be true by experience, as well.

The process benefited substantially from the participation of a diverse group of stakeholders who vigorously articulated varied, and often conflicting, points of view. The Committee established an excellent record and it provides us with the information we need to make sound decisions and recommendations. From this point of view, I consider the stakeholder process a tremendous success and I want to note that I am especially impressed with the quality of the comments and suggestions provided by the public participants.

However, as I have pointed out in the past, I consider the system employed today to be hopelessly flawed, biased largely in favor of a single factor, getting an application in -

and out - of the Energy Commission in the short amount of time called for in the statute - one year. I can find no compelling rationale in this, other than the fact that the statute is clear in the time deadline, for processing such important events as new generation in this manner. The rationale for any type of time deadline, which in the end is an important constraint on abuse, is not consistent or related to the current needs of the State.

With recent experience it is clear that the sacrifice implied by using this time-biased system is accuracy, integrity of results, and overall protection of public interests. All this occurs using the worst possible combination of information gathering techniques, which ignore real cumulative regional or statewide issues, blur important costs and interrelationships with other agencies, and make the process of certifying a new facility a virtual crap shoot for the presiding member, who at the end of the process is left with no real decision other than "approval" with various ranges of mitigation measures that can be applied.

We have allowed the zeal for an historical bureaucratic process to blind us to the need to fundamentally overhaul a system designed for a regulatory world that simply does not exist anymore. What follows is the simple outline of an alternative process for siting new power plants (or transmission lines or storage facilities or gas transmission pipelines) which I hope can be integrated into, or replace, the surface fixes staff has offered in the current document.

A. Develop An Appropriate Replacement for the Electricity Report/Notice of Intent Process

The former Electricity Report process, with its Integrated Assessment of Need, provided a policy framework for guiding power plant siting decisions. The Electricity Report provided a macro-scale context that guided the Energy Commission's statewide siting of power plants. In many ways, this report was similar to local government's general plan, which guides the development of land within a city or county. The Energy Commission's Notice of Intent (NOI) provided an alternative-site-evaluation process wherein siting decisions were further analyzed at a smaller scale. Finally, the Application for Certification provided the most detailed step in the siting decision-making process - permitting a power plant facility.

Today, we lack a clear linkage from general siting policies to power plant permitting decisions. At the same time, we must still make many of the same difficult decisions the previous process helped inform. Only now, we must make these decisions without the benefit of the macro perspective once provided by the Electricity Report and NOI. These decisions involve important issues that must be viewed with the "big picture" in mind. For example, the decisions to exercise the Warren-Alquist Act authority to override a local land use law, or to exercise the Commission's CEQA “statement of overriding considerations” authority. Both decisions involve significant policy issues, but the Committee's proposed report does not provide solutions to these problems.

B. Develop a Realistic Time Frame and Products for Decision-making

In evaluating the AFC process in our siting program, it is useful to think of the process as having two distinct steps. The first is the environmental review process and the second is the decision-making process. The environmental review process includes the development of an application, its review for data adequacy, and the discovery and analysis phases. The Final Staff Assessment is the final document in the environmental review process. The evidentiary hearings are the first step in the decision-making process. The Presiding Member's Proposed Decision and the Commission Decision complete the decision-making process. We have all learned, by sitting on siting cases, that accurate and complete information is needed in order for either the environmental review or the decision-making step to be successfully completed in a time-efficient manner.

The current time frame is artificial and not related to the actual decision that needs to be made. If we step back and ask what we are trying to accomplish, I think it will be clear that the objective is to create a process where:

- the nature and characteristics of the project itself are clear to all parties including the public before analysis
- the environmental impacts of constructing and operating such a facility are clearly identified in such a way that they can either be mitigated or the project can be fairly denied or relocated because of them
- the public (and most importantly the affected public) and interested parties are involved actively but not punitively in the process
- the overall energy system benefits from the resulting project

I believe this set of objectives means that we must fundamentally alter the system for evaluation so the decision is logically founded on a set of information gathered systematically and not in the current rushed and often ad-hoc manner of current siting cases.

The Energy Commission's multi-step siting process has been concentrated into a single-step permitting process with a 12-month timeframe. This timeframe is unrealistic as it does not account for the wide range of power plant siting issues that are experienced, both from an environmental and public-health impact perspective as well as a local land-use conflict perspective. These siting issues need to be addressed completely prior to an adjudicatory proceeding. Preparing an environmental impact report (EIR) is one way to address these issues directly.

Under my alternative design, I propose that the project be fully defined before it is deemed complete for submittal. In previous memos, I have outlined the nature of the questions that must be answered for a project to be described in this manner. For purposes of today's deliberations, I simply propose that the project applicant submit a complete enough description that the project can be analyzed by an independent outside consultant operating in the current EIR process used by local government. Only at this

point would the time clock start. This puts the burden of defining the project and supplying the supportive information used in decision-making where it belongs, on the applicant rather than the public.

We need to recall that our process should not only serve the applicant and the staff – who ostensibly represent the public – but the affected public itself.

Using this standard, the project would not be continually reinvented throughout the siting process and the decision-maker would see a complete project description (as would the public or interested parties) which could then be the subject of a more focused set of public hearings. Imagine this in contrast to the lengthy and largely disfunctional, disruptive and discontinuous current system of PSA, FSA, Evidentiary Hearings, PMPD etc.

A side benefit to preparing an EIR, rather than a Preliminary and Final Staff Assessment, would be that the siting process could better coordinate with local government's process. Improved local government coordination is needed in order to provide adequate time for making discretionary land use decisions such as general plan amendments and rezoning. For instance, an important benefit of the EIR process is the scoping exercise that follows the preparation of the Initial Study. In the scoping exercise, the Commission could determine whether the project's environmental review could result in an expedited Commission Decision, or whether the technical issues or agency coordination issues would demand a longer time frame to complete.

In brief the process would work like this:

1. An applicant would meet with Energy Commission Staff to determine a process for submittal, revealing intent to locate a new plant and allowing CEC staff to outline the other governmental agencies that must be consulted and involved in the process. A staff project manager would be assigned.
2. A complete project description would be submitted to the CEC, who would then select an outside EIR consultant to analyze the proposal. Fees for this would be paid by the developer.
3. A scoping session would be initiated, with at least the Presiding Member of the Assigned Committee, and a scope of project inquiry would be established.
4. A completed project description and Environmental Impact Report would be submitted to the CEC and a hearing to determine the completeness of the information would be initiated. If complete, the project time clock would be started.
5. Within 120 days of submittal, the public review process would be complete and a proposed decision rendered.

The benefits of such a system are obvious. Since the time involved in preparing information varies by project, this does not occur within the limits which should be attached to the PUBLIC REVIEW PROCESS, which depends on accurate information rather than posturing and showmanship and maneuvering which currently occurs in the evidentiary process. The public and other agencies are fully involved and the local

government agency obtains a document that is complete for their own follow-on decisions involving land use, general plan and zoning approvals. Further, changes in project design can be seen in the context of a fully developed environmental and policy based document which will be a clear basis for judging the efficacy of potentially allowing requested changes.

C. Address Staffing and Filing Fee Issues

The report needs to acknowledge that it is no longer appropriate for the taxpayers to fund the State's environmental impact review for merchant plants and that the Commission intends to pursue filing fees.

An additional benefit of connecting ourselves to the EIR process is that peak-workload staffing and filing-fee issues become clear and manageable. The Commission can readily adopt local government's well-established method of hiring EIR consultants and funding their analyses through developer's fees. As is the case with local government, a core staff would be maintained to oversee and review the EIRs prepared by consultants, and to fulfill our program planning, project management, and compliance monitoring and enforcement obligations. The alternative system would diminish the burden to continually add and subtract staff to service the projects, allowing important review and management of applications to take place within the Commission in a timely manner and putting the cost of processing where it belongs.

D. Address System-wide Impacts Issues

The Commission's siting process must address impacts to the electricity system. Despite the many agencies and organizations that have a role in the planning and operation of the system, there are gaps in coverage of issues. In particular, the power system upgrades that may be the result power plant development. The environmental impacts associated with these upgrades must be evaluated in the siting process.

In addition, the Commission's siting process can be better informed by analyses that target and encourage congestion relief. Analyses are also needed that address the natural gas supply implications of a potential power plant development boom. These kinds of comprehensive analyses are needed to provide the "big picture" perspective and fill the void left by the elimination of the Integration Assessment of Need.

CONCLUSION

The Energy Facility Siting Committee clearly faced a challenging task when they embarked upon a process to evaluate the siting process. While the stakeholder process resulted in a wealth of information, the Committee's report and its recommendations do not take that information and go far enough. For the reasons stated above, I do not think the report is comprehensive and I ask that the Committee integrate my comments into the report.

In the end, I cannot agree with a report that concludes "…the Commission has verified that the siting process is fundamentally sound and provides an efficient method for licensing large power plants and related transmission lines in California." (see page 1) It is time to offer up more than a narrative that suggests all is well, when it clearly is not.

Respectfully submitted,

/s/

MICHAL C. MOORE
Commissioner